BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| MIKE OLESON |) |
|-------------------------------|------------------------------|
| Claimant VS. |)) Docket No. 106 224 |
| K-MART CORPORATION Respondent |) Docket No. 196,234 |
| AND | |
| SELF-INSURED |) |
| Insurance Carrier | |

<u>ORDER</u>

Respondent appeals from a Preliminary Hearing Order of February 8, 1995, wherein Administrative Law Judge Floyd V. Palmer granted claimant benefits, finding a causal connection between claimant's job duties and his accidental injury.

ISSUES

- (1) Whether claimant met with personal injury by accident arising out of and in the course of his employment with respondent.
- (2) Whether the Administrative Law Judge was within his jurisdiction to admit certain affidavit evidence in light of K.S.A. 44-534a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment. There was a causal connection between the claimant's job duties and his accidental injury.

The Appeals Board further finds the affidavits submitted by the claimant of MaDonna Reed and Bill Thornton were properly admitted under K.S.A. 44-534a as respondent was given sufficient time to respond to said affidavits after the preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated February 8, 1995, remains in full force and effect.

| IT IS SO ORDERED. |
|------------------------------|
| Dated this day of May, 1995. |
| |
| BOARD MEMBER |
| |
| BOARD MEMBER |
| |
| BOARD MEMBER |
| |

c: Scott J. Bloch, Lawrence, Kansas Clifford K. Stubbs, Lenexa, Kansas Floyd V. Palmer, Administrative Law Judge George Gomez, Director